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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 SAM ABOUD,) Case No. C04-00017 JW
19 v.)
20 INTERNATIONAL BUSINESS MACHINES)
21 CORPORATION, JOE SMYTH; JOHN DOE)
22 #1; JOHN DOE #2; DOES 1-48,)
23 Defendants.)
24)
25)
26)
27)
28)

29 **STIPULATION AND [REPROPOSED]
30 ORDER MODIFYING SCHEDULING
31 ORDER**

32 The parties hereby stipulate to modify the scheduling order in this case as follows:
33 WHEREAS, a substantive discovery dispute has arisen between Plaintiff and a non-party;
34 WHEREAS, a hearing to resolve the discovery dispute has been scheduled on an
35 expedited basis;
36 WHEREAS, to accommodate the resolution of the discovery dispute, Plaintiff requested
37 that certain noticed depositions be scheduled following the close of fact discovery on September
38 14, 2005;

1 WHEREAS, the parties believe that litigation efficiency will be increased by permitting
2 the parties to complete fact discovery prior to exchanging expert-witness information and filing
3 dispositive motions; and

4 WHEREAS, the parties also intend to mediate the matter in October 2005,

5 IT IS HEREBY STIPULATED AS FOLLOWS:

6 1. Depositions of IBM witnesses The Person Most Knowledgeable Concerning the
7 Acquisition of the Storage Technology Division by Hitachi, Dilip Kandlur, Dennis Renaud,
8 Wayne Imiano, Stuart Parkin, previously noticed will take place on or before November 4, 2005.
9 The depositions of non-party witnesses Ciarn Fox, Anthony Seales, and Kim Karcher, previously
10 noticed will take place on September 26, 2005.

11 2. With the exception of the depositions referenced in paragraph 1, no additional
12 discovery will take place following September 14, 2005.

13 3. The deadlines for exchanging expert-witness information and filing dispositive
14 motions will be modified as follows to take into account the schedule set forth above:

15 a. The last day for hearing dispositive motions is December 19, 2005.

16 b. Any party wishing to present expert witness testimony with respect to a
17 claim or a defense shall lodge with the Court and serve on all other parties the name, address,
18 qualifications, resume and a written report that complies with Fed. R. Civ. P. 26(a)(2)(B) on or
19 before November 1, 2005.

20 c. Any party objecting to the qualifications or proposed testimony of an
21 expert must file, serve and notice a motion to exclude the expert or any portion of the expert's
22 testimony in writing in accordance with Civil Local Rule 7-2, for hearing no later than November
23 29, 2005.

24 d. If the testimony of the expert is intended solely to contradict or rebut
25 opinion testimony on the same subject matter identified by another party, the party proferring a
26 rebuttal expert shall make the disclosures required by Federal Rule of Civil Procedure
27 26(a)(2)(B) no later than December 16, 2005.

28 e. Expert discovery must be completed no later than January 9, 2006.

1 f. The attorneys who will try the case will confer with one another and file
2 and lodge with Chambers on January 16, 2006 a Preliminary Pretrial and Trial Setting
3 Conference Statement and Proposed Order.

4 g. The attorneys who will try the case will appear on January 30, 2006 at
5 11:00 a.m. for a Preliminary Pretrial and Trial Setting Conference.

6 The parties respectfully request that the Court adopt the above-referenced schedule, and
7 modify the Court's Scheduling Orders accordingly.

9 | Dated: September 8, 2005

ROBERT DAVID BAKER, INC.

By: Robert David Baker
Attorneys for Plaintiff Sam Abboud

Dated: September 8, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

By: Scott G. Lawson
Scott G. Lawson
Attorneys for Defendant
International Business Machines Corporation

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/12/05

/s/ James Ware

JAMES WARE

United States District Judge